

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT L. HAWKINS,

Case No. 89-CR-80335

Petitioner,

v.

Hon. Gerald E. Rosen

UNITED STATES OF AMERICA,

Respondent.

_____ /

ORDER DENYING CERTIFICATE OF APPEALABILITY

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on _____ December 15, 2011

PRESENT: Honorable Gerald E. Rosen
Chief Judge, United States District Court

By opinion and order dated June 22, 2006, this Court enjoined Petitioner Robert Hawkins from filing any further motions in the above-captioned criminal case without first seeking and obtaining leave of the Court. Since the entry of this opinion and order, Petitioner has sought leave to file several motions, but the Court has denied each such request for lack of the requisite showing: namely, “(i) that the issues [Petitioner] seeks to present have not yet been addressed in the Court’s prior rulings, and (ii) that his filing is made in good faith and the issues he raises are neither frivolous nor abusive of the judicial process.” (6/22/2006 Op. at 6.) Most recently, by opinion and order dated June 27, 2011, the Court denied Petitioner’s request for leave to file a motion under 28 U.S.C. § 2255,

and Petitioner is now pursuing an appeal from this ruling.

In a letter dated November 14, 2011, the Sixth Circuit Court of Appeals has construed Petitioner's pending appeal as a "post-conviction proceeding pursuant to 28 U.S.C. Section[] . . . 2255," and has requested that this Court issue an order either granting or denying a certificate of appealability. (Docket No. 11-1946, 11/14/2011 Letter.)¹ In this Court's view, however, it is doubtful whether Petitioner's most recent motion (and his appeal from the denial of this motion) should be treated as arising under 28 U.S.C. § 2255. This motion was not judged under the standards of § 2255, but instead was denied for failure to make the showing demanded under the Court's June 22, 2006 order enjoining further filings. Under these circumstances, it is questionable whether the requirement of a certificate of appealability should apply here.²

Nonetheless, to the extent that this requirement is applicable here, the Court readily concludes that no certificate of appealability should issue. In the ruling now on appeal, this Court held that Petitioner had "fail[ed] to identify a legitimate, non-frivolous basis for the filing he proposes to make." (6/27/2011 Op. at 2.) In light of this

¹The Court notes that this letter quotes language from Rule 22(b) of the Federal Rules of Appellate Procedure requiring a district court to "either issue a certificate of appealability or state the reasons why such a certificate should not issue." This quoted language, however, was removed from Rule 22(b) in 2009, and replaced with a reference to Rule 11(a) of the Rules Governing Section 2255 Proceedings. It is this latter Rule, then, that is the current source of the requirement that a district court must either issue or deny a certificate of appealability.

²For what it is worth, it appears from the docket that Petitioner has been permitted to pursue appeals from prior orders denying leave to file motions without first securing a certificate of appealability.

conclusion that Petitioner had again failed to satisfy the threshold filing standards established under the Court's June 22, 2006 order, it readily follows that Petitioner has not "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), such that a certificate of appealability would be warranted.

For these reasons,

NOW, THEREFORE, IT IS HEREBY ORDERED that a certificate of appealability is DENIED as to Petitioner's present appeal in Sixth Circuit Case No. 11-1946.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: December 15, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 15, 2011, by electronic and upon Robert L. Hawkins, #12938-039, Federal Correctional Facility Miami, P.O. Box 779800, Miami, FL 33177 by ordinary mail.

s/Ruth A. Gunther
Case Manager